Supreme Court, U.S.
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No. 14-1516

IN THE
Supreme Court of the United States

STEPHEN DUNCAN, Warden
Petitioner,

v.

LAWRENCE OWENS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT LAWRENCE OWENS IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Seventh Circuit correctly granted relief under 28 U.S.C. § 2254, having determined: that the Illinois state trial court expressly convicted Respondent based on supposed "facts" not supported by any evidence presented at trial; and that the trial court's error was not harmless.

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INTRODUCTION

There are no grounds for this Court to grant certiorari to review the Seventh Circuit's highly fact-specific, and in any event correct, grant of relief under 28 U.S.C. § 2254. Petitioner does not contend that the Seventh Circuit's decision conflicts with decisions of other Circuits. Nor does Petitioner contend that the Seventh Circuit decided an important issue of federal law. Moreover, Petitioner does not seriously contest the existence of a clearly established point of law, in this case that it would be unconstitutional for a trial court to convict a defendant based on anything other than the evidence introduced at trial. Rather, apparently misunderstanding the holdings of the state trial court and the Seventh Circuit, Petitioner asks this Court to engage in a highly fact-specific analysis of certain events that took place during Respondent's trial in November 2000.

This Court has repeatedly emphasized that it does not engage in error correction, particularly where, as here, determining whether an error exists requires mining a fifteen-year-old trial transcript to determine the meaning of certain words uttered by a trial judge when explaining his verdict. Further, were this Court to engage in this analysis it would then need to engage in a second, highly fact-specific determination of whether certain eyewitness testimony presented at trial was sufficiently strong that any constitutional error committed by the trial court should be dismissed as harmless.

Moreover in repeated applications before this Court seeking a stay of the mandate, Petitioner suggested that the failure to grant a stay might moot its petition entirely should the Illinois courts vacate Respondent's conviction. This Court has now denied all of those applications and the Illinois state trial court has now vacated Respondent's conviction and initiated proceedings in which Petitioner is going to retry Respondent. These vehicle problems provide further reasons to deny the petition.

In any event, and as explained further below, the Seventh Circuit did not err in its decision. In pronouncing a verdict of guilt, the trial court expounded the view that "all of the witnesses skirted the real issue." Pet. App. 4a. Rather than crediting Petitioner's witnesses and adopting Petitioner's view of what occurred, the trial court found that the victim was a drug dealer; that Respondent knew the victim was a drug dealer; and that Respondent wanted to kill the victim for that reason. Pet. App. 4a-5a. Yet, as the Seventh Circuit correctly held "there was no factual basis of any sort, in the trial record or elsewhere" for the latter two findings. Pet. App. 7a. The Seventh Circuit determined that by simply inventing two "facts" and then convicting Respondent on the basis of those "facts," the trial court had violated the clearly established legal proposition – uncontested by Petitioner – that a defendant has "the right to have [his] guilt or innocence adjudicated on the basis of evidence introduced at trial." Pet. App. 10a.

In addition, the Seventh Circuit cited and applied this Court's test from *Brecht v. Abrahamson*, 507 U.S. 619, 637 (1993), for determining whether a constitutional error should be dismissed as "harmless" when challenged in a habeas corpus proceeding. Pet. App. 9a. Finding the evidence of guilt actually presented at trial "far from conclusive," the Seventh Circuit found that Respondent had met the *Brecht* standard. Pet. App. 8a-9a. There was thus no error in the Seventh Circuit's decision and this is yet another reason that the petition should be denied.

COUNTERSTATEMENT OF FACTS

A. Proceedings Before The Illinois Courts

Respondent was convicted of first-degree murder in November 2000 after a bench trial in the Circuit Court of Cook County. *See* Pet. App. 1a. The primary evidence introduced against Respondent came from two eyewitnesses, Maurice Johnnie and William Evans, who identified Respondent as the individual who murdered the victim, Ramon Nelson. *Id.* at 3a. As the Seventh Circuit noted, there were various internal inconsistencies in the testimony of both witnesses as well as inconsistencies between the two witnesses' testimony. *Id.*

Mr. Evans – who had been promised probation on two drug charges by the prosecution in return for his testimony, *see* Pet. App. 6a, – claimed that there had been two assailants, whereas Mr. Johnnie testified that there had only been one. *See id.* at 3a.

Mr. Evans testified that the victim had spoken with his assailants before the attack, whereas Mr. Johnnie did not testify to having seen any discussion. Pet. App. 3a. Although Mr. Evans supposedly had identified Respondent as the assailant in a line-up and photo array, during trial he twice identified the photograph of a different individual as the assailant despite Respondent's presence in the courtroom. *Id.* Although Mr. Johnnie identified Respondent in both the line-up and the photo array, as the Seventh Circuit observed, "[Respondent] Owens was the only person in the line-up who also was in the photo array, thereby diminishing the probative value of the second identification." *Id.* Petitioner also introduced at trial the fact that the victim, Mr. Nelson, had crack cocaine packaged for sale on his body when he was murdered. *See id.*

Entirely absent from the trial was any physical evidence linking Respondent to the murder such as, for example, Respondent's fingerprints on the murder weapon. *See* Pet. App. 3a. Similarly absent was any evidence that "[Respondent] Owens had known Nelson, used or sold illegal drugs, or had any gang affiliation." *Id.* Nevertheless, in pronouncing his judgment from the bench, the trial judge found:

> [A]ll of the witnesses skirted the real issue. The issue to me was you have a seventeen year old youth on a bike who is a drug dealer [Nelson], who Larry Owens knew he was a drug dealer. Larry Owens wanted to knock him off. I think

> the State's evidence has proved that fact. Finding of guilty of murder.

Pet. App. 4a-5a.

On direct appeal, Respondent raised various arguments including, as relevant here, that the trial court had made extrajudicial findings, and rendered its conviction based on factual assertions not introduced or proven at trial. In reviewing this argument, the Illinois Appellate Court observed "there is no indication whether or not the trial judge assessed the credibility of the eyewitnesses, resolved conflicts in their testimony, or weighed the evidence or drew reasonable inferences therefrom." Pet. App. 118a.

Moreover, the Illinois Appellate Court noted, "there is no physical evidence linking defendant to the crime and the identity of the perpetrator of the charged crime is at issue and defendant's conviction rests upon eyewitness identification testimony. " Pet. App. 120a. The court further acknowledged, "[i]t is true that Johnnie and Evans contradict each other on some points regarding the event," – noting specifically that Mr. Evans claimed there were two assailants while Mr. Johnnie claimed there was only one – "and the reliability of Evans' testimony is severely called into question." Pet. App. 119a, 119a n.2. Nevertheless, despite the fact that Respondent's conviction rested in essence on a sole eyewitness's identification, the court held "the trial court's speculation as to defendant's motive for assaulting

Nelson, will be construed as harmless error." Pet. App. 120a.

Justice South dissented. Unlike the majority, Justice South focused on the trial judge's stated basis for convicting Respondent, noting that "[w]hat we do have is a trial court manufacturing, supplying, and interjecting its own evidence into a trial and then affirmatively stating on the record that this manufactured evidence constituted the basis of its verdict." Pet. App. 128a-129a (South, J., dissenting). Justice South found the eyewitness identifications "marginal at best" given that Mr. Evans's testimony was "doubtful and highly suspect" – all the more so in light of his cooperation agreement – and that the trial court "never stated that [it] relied on [Mr. Johnnie's] identification or other properly admitted evidence." *Id.* at 127a-129a. As such, Justice South "fail[ed] to comprehend" how the trial court's conduct could be deemed harmless error, and would have held that "justice and fundamental fairness demand that defendant be afforded a new trial free from such prejudice." *Id.* at 129a. The Illinois Supreme Court denied Respondent's petition for leave to appeal in April 2003. Pet'n for Leave to Appeal at PageID 1794, *State of Illinois v. Owens*, No. 95534 (Ill. Apr. 2, 2003), ROA-ECF No. 152-2.[1]

Respondent pursued state collateral relief which, after a process lasting more than six years, proved

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[1] Citations to "ROA-ECF No. _" are to the Record on Appeal in *Owens v. Acevedo*, No. 1:08-cv-07159 (N.D. Ill.).

unsuccessful. Amended Memorandum Opinion & Order at 14-16, *Owens v. Acevedo*, No. 1:08-cv-7159 (N.D. Ill. May 29, 2012), ROA-ECF No. 89.

B. Proceedings Before The Federal Courts

In addition to his state collateral proceedings, Respondent brought a petition for habeas relief pursuant to 28 U.S.C. § 2254 raising, *inter alia*, his claim that the trial court had convicted him as a result of improper findings based on factual assertions other than those presented at trial. Amended Memorandum Opinion & Order at 1, (No. 1:08-cv-7159), ROA-ECF No. 89. The district court rejected Respondent's argument. *Id.* at 21. The Seventh Circuit granted Respondent a certificate of appealability, finding that Respondent had "made a substantial showing of the denial of his right to due process by the trial judge's reliance on extra-record facts when deciding Owens's guilt," Order, *Owens v. Duncan*, No. 14-1419 (7th Cir. May 12, 2014), ECF No. 11.

The Seventh Circuit reversed the district court and granted Respondent's § 2254 petition. Pet. App. 1a-10a. Focusing on the state trial court's own explanation for its finding of guilt, the Seventh Circuit held that Respondent's conviction violated his clearly established federal rights. *First*, the Seventh Circuit found, like the Illinois Appellate Court before it, that the record of this short trial contained absolutely no evidence to support the state trial court's finding that Respondent knew Mr. Nelson or that he had killed Mr. Nelson because of the latter's

participation in the illegal drug trade. *See id.* at 4a-5a. Recognizing that, in some cases, not every fact upon which a verdict is based must be found in the evidence introduced by a party, the Seventh Circuit distinguished the instant case because "there was no factual basis of any sort, in the trial record or elsewhere, for the judge's finding that Owens knew Nelson, let alone knew or cared that he was a drug dealer. The judge made it up." Pet. App. at 7a.

Second, the Seventh Circuit rejected Petitioner's characterization, which it again makes before this Court, of the issue in the case as whether it was permissible for a trial court to make an unsupported assertion about a defendant's motive once the trial court had determined the defendant's guilt based on the evidence presented at trial. *See* Pet. App. at 7a-8a, *see also* Pet. at 7-9. The Seventh Circuit accepted that "if the evidence of Owens's guilt had been overwhelming, the judge's conjecture that Owens knew Nelson and knew him to be a drug dealer and that Owens was . himself involved in the drug trade could be disregarded as goofy but harmless." Pet. App. 8a. But, as the Seventh Circuit found, no such holding was appropriate in light of the specific facts presented below. Rather, the "evidence of Owens's guilt was not overwhelming. Had it been, it is unlikely that the judge would have described Owens's supposed (but by only the judge) knowledge of Nelson's involvement in the drug business as 'the real issue' in the case. What may have made it the 'real issue' to the judge was the

scantiness of the actual evidence of Owens's guilt." *Id.* at 8a-9a. (Seventh Circuit's parenthetical).

Third, the Seventh Circuit turned to the relevant question under § 2254 of whether the state trial court's error violated Respondent's clearly established federal rights. Pet. App. 9a-10a. As the Seventh Circuit noted, cases such as *Holbrook v. Flynn*, 475 U.S. 560, 567 (1986), *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978), and *Estelle v. Williams*, 425 U.S. 501, 503 (1976), all establish a defendant's "right to have one's guilt or innocence adjudicated on the basis of evidence introduced at trial...." Pet. App. 10a. "The Supreme Court has made clear in the cases we've cited and quoted from that a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever." *Id.* On this basis, the Seventh Circuit found that Respondent had satisfied the "exacting standard" of § 2254. Pet. App. 9a-10a.

The Seventh Circuit thus reversed the district court's judgment denying Respondent's § 2254 petition and gave Petitioner 120 days within which to decide whether to retry Respondent. Pet. App. 10a. If Petitioner did not decide to retry Respondent, the Seventh Circuit ordered that Respondent be released from prison. *Id.*

C. Proceedings Following The Seventh Circuit's Decision

On March 26, 2015, Petitioner filed a Motion to Stay Issuance of Mandate Pending the Filing of a

Petition for a Writ of Certiorari with the Seventh Circuit. In its motion, Petitioner argued that it would suffer "irreparable injury should it be required to retry petitioner while simultaneously seeking to defend its state court judgment," but that Respondent's continued incarceration after his habeas petition was granted "cannot be characterized as imposing 'substantial harm' on him." Motion to Stay Issuance at 6-7, *Owens v. Duncan*, No. 14-1419 (7th Cir. Mar. 26, 2015), ECF No. 38. In an order dated March 30, 2015, without calling for a response, the Seventh Circuit denied Petitioner's petition for a stay. Order, No. 14-1419 (7th Cir. Mar. 30, 2015), ECF No. 39.

On April 17, 2015, Petitioner filed an application with this Court asking that it stay the mandate of the Seventh Circuit pending its anticipated filing of a petition for certiorari. Application To Recall And Stay Mandate at 1, *Duncan v. Owens*, No. 14-1516 (U.S. Apr. 17, 2015) (No. 14A1074). Repeating almost verbatim the text of its motion before the Seventh Circuit, Petitioner again argued that its interest in not having to retry Respondent while a petition for a writ of certiorari was pending outweighed Respondent's interest in being released from custody. *Id.* at 4-7. On April 30, 2015, Respondent filed an opposition to Petitioner's application, and on May 11, 2015, Justice Kagan denied Petitioner's application. *Duncan v. Owens*, No. 14-1516, Order denying stay of mandate (U.S. May 11, 2015) (No. 14A1074) (Kagan, J.)

On June 22, 2015, the final day on which it could timely file a petition for certiorari, Petitioner filed its petition for a writ of certiorari with this Court.

On July 21, 2015, the final day on which it could decide to initiate retrial proceedings pursuant to the Seventh Circuit's decision, Petitioner filed a motion styled as a "Status Report" with the district court where it announced "that it has decided to [retry Respondent.]." Status Report, *Owens v. Duncan*, No. 08-cv-7159 (N.D. Ill. July 21, 2015), ROA-ECF No. 166. After announcing its decision, however, Petitioner said it "anticipate[d] taking no further action in Cook County Circuit Court until the resolution of respondent's petition for a writ of certiorari in order to avoid interfering, conflicting, or mooting, respondent's ongoing appeal in this case." *Id.* at 2-3.

On July 28, 2015, the district court held a hearing regarding Petitioner's "Status Report," and a few hours after the hearing indicated to counsel via an email from a law clerk that it would "not extend the time to initiate proceedings in state court pending the outcome of respondent's petition for writ of certiorari." On July 29, 2015, the district court issued an order denying Petitioner's motion and providing that "[p]ursuant to the grant of a writ of habeas corpus" the state was required either to "initiate[] retrial proceedings" or to release Respondent by August 4, 2015. Order, *Owens*, No. 08-cv-7159 (N.D. Ill. July 29, 2015), ROA-ECF No. 175.

On July 28, 2015, Petitioner filed a second application with this Court, asking once again that the mandate of the Seventh Circuit be stayed pending this Court's resolution of its petition for certiorari. In this second application Petitioner suggested for the first time that "arguably, one consequence of the issuance of the writ of habeas corpus now would be to moot applicant's petition for a writ of certiorari." Application To Recall And Stay Mandate at 5, *Duncan v. Owens*, No. 14-1516 (U.S. July 28, 2015) (No. 15A111). Later in the same application, Petitioner again emphasized that "if the Seventh Circuit's mandate is carried out" – something that has now occurred in light of the district court's order of July 29, 2015 – "the State may have no choice but to take action that arguably might moot applicant's appeal [*i.e.* petition for a writ of certiorari] to this Court." Application at 9; *see also id.* at 10 (claiming the public had a compelling interest in the "State not being compelled to abandon [this Court's] review process"). On July 30, 2015, Justice Kagan denied Petitioner's second application. *Duncan v. Owens*, No. 14-1516, Order denying stay of mandate (U.S. July 30, 2015) (No. 15A111) (Kagan, J.).

On July 30, 2015, Petitioner renewed its application, presenting for a third time its arguments for a stay before this Court. Petitioner also requested that its renewed application be presented to Justice Scalia. On August 13, 2015, Justice Scalia denied the renewed application. *Duncan v. Owens*, No. 14-1516, Order denying stay

of mandate (U.S. Aug. 13, 2015) (No. 15A111) (Scalia, J.).

On August 4, 2015, the Acting Presiding Judge of the Cook County Circuit Court – Criminal Division, ordered that Respondent's conviction be vacated immediately consistent with the district court's order of July 29, 2015. The court then held a brief bail hearing and directed that the case be referred to the Presiding Judge of the Sixth Municipal District (where Respondent's original trial had been held) for assignment to an active trial calendar. Trial proceedings in which Petitioner intends to retry Respondent are now in progress.

REASONS FOR DENYING THE PETITION

I. The Petition For Certiorari Solely Seeks Fact-Bound Error Correction.

Petitioner has identified no valid, let alone compelling, reason for this Court to grant certiorari. Petitioner concedes "the absence of a circuit split," Pet. at 11, as it must, and all but acknowledges that the Seventh Circuit's decision is nothing more than the application of well-settled law to the specific set of facts presented by Respondent's case.

Indeed, searching the Seventh Circuit's decision, there are only three propositions of law contained within it, and each is uncontested. *First*, the Seventh Circuit observed, "only clearly established violations of a defendant's constitutional rights permit us to reverse a state court decision challenged

in a federal habeas corpus proceeding." Pet. App. 9a-10a (citing *Nevada v. Jackson*, 133 S. Ct. 1990 (2013)). There is, of course, no dispute over this proposition established in the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132 and this Court's decisions interpreting AEDPA.

Second, the Seventh Circuit noted that various decisions of this Court affirm a basic principal of a fair trial, namely that "a judge or a jury may not convict a person on the basis of a belief that has no evidentiary basis whatsoever." Pet. App. 10a (citing *Holbrook v. Flynn*, 475 U.S. 560 (1986); *Taylor v. Kentucky*, 436 U.S. 478 (1978); *Estelle v. Williams*, 425 U.S. 501 (1976)). Again, Petitioner does not contest this rule, or claim that an individual can fairly be convicted based on evidence other than that presented at trial.

Third, the Seventh Circuit analyzed the trial court's error under the harmless error test this Court promulgated in *Brecht v. Abrahamson*, 507 U.S. 619 (1993), to determine whether the error had a "substantial and injurious effect" on Respondent's rights. Pet. App. 9a. Yet again, Petitioner claims no error in the use of this test.

Bereft of any claim that the Seventh Circuit either propounded a new legal standard in conflict with another Circuit or decided some open and important question of federal law, Petitioner instead makes a classic plea for error correction. Petitioner argues that "[t]he Seventh Circuit's published

decision defies AEDPA and the many decisions of this Court establishing and reaffirming that clearly established Supreme Court precedent is required to support a grant of habeas relief." Pet. at 7. Petitioner's basis for this claim is that "no case supports respondent's claim that because no evidence directly established the trial court's inference as to his motive, which was not an element of his crime, his rights were violated." *Id.* Rather, Petitioner asserts, "the cases on which the Seventh Circuit relied involved juries that were exposed to prejudicial and improper information or influences from which guilt could be inferred." Pet. at 8. Moreover, Petitioner claims that in reading the trial transcript the Seventh Circuit "mischaracteriz[ed] the state trial judge's remarks." Pet. at 7, 10.

For the reasons described in Part II *infra*, the Seventh Circuit's decision correctly cites and relies upon clearly established precedent from this Court. But, as pertinent here, Petitioner argues only that the Seventh Circuit misunderstood the meaning of the specific words used by the trial court and misunderstood the precise holdings of this Court's cases. Petitioner thus seeks fact-bound error correction, based on the application of undisputed precedent to the highly fact-specific scenario presented at Respondent's trial. That is not a basis for this Court to exercise its certiorari jurisdiction. Rule 10 states: "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *See* Sup. Ct. R. 10.

Decisions of this Court for many years have borne out this rule's command. For example, in *United States v. Johnston*, 268 U.S. 220 (1925), the Court observed "We do not grant a certiorari to review evidence and discuss specific facts." *Id.* at 227; *see also Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974) ("This Court's review is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review.").

Finally, in the last two of its three applications before this Court seeking to stay the mandate of the Seventh Circuit's decision, Petitioner suggested that its petition might be rendered moot were this Court to deny the application for a stay and the Illinois state courts were to vacate Respondent's conviction pursuant to the grant of habeas relief. *See* Application To Recall And Stay Mandate at 5, *Duncan*, No. 14-1516 (U.S. July 28, 2015); [Renewed] Application To Recall And Stay Mandate at 5, *Duncan*, No. 14-1516 (U.S. July 30, 2015). Since Petitioner made those arguments on July 28 and July 30, 2015, both of the eventualities Petitioner identified have come to pass: this Court has denied Petitioner's repeated applications for a stay and Respondent's conviction has now been vacated by the Illinois state courts. *See Duncan*, Order denying stay of mandate (U.S. May 11, 2015) (No. 14A1074) (Kagan, J.); *Duncan*, Order denying stay of mandate (U.S. July 30, 2015) (No. 15A111) (Kagan, J.), *Duncan*, Order denying stay of mandate (Aug. 13, 2015) (No. 15A111) (Scalia, J.); Order, *Owens v.*

Duncan, No. 08-cv-7159 (N.D. Ill. July 29, 2015), ROA-ECF No. 175; Order, *People v. Duncan*, No. 99CR2528701 (Cir. Ct. Cook Cty. Aug. 4, 2015). Petitioner twice suggested to this Court that if these events were to occur, the petition for a writ of certiorari could be rendered moot and, unless Petitioner has now reversed his position, the vehicle issue presented by the potential mootness of this petition presents yet another reason it should be denied.

II. Petitioner's Arguments On The Merits Are Erroneous.

For the reasons discussed in Section I above, this petition for a writ of certiorari should be denied quite apart from the merits of the Seventh Circuit's decision because the highly fact-bound question presented is not cert-worthy. *See* Sup. Ct. R. 10. But, looking to the merits of the Seventh Circuit's decision presents another reason certiorari should be denied, because that decision was entirely correct.

Petitioner's argument is based on a false premise, namely that the trial court merely made an "inference as to [Respondent's] motive, which was not an element of his crime." Pet. at 7. Petitioner made this same argument before the Seventh Circuit, which correctly recognized that this claim "mistakenly characterize[d]" Respondent's objection to the trial court's action. Pet. App. 7a. As the Seventh Circuit noted, "[h]ad the judge said that he'd found the defendant guilty beyond a reasonable doubt on the basis of the evidence presented at the

trial, and merely added that 'by the way my guess is that Owens knew Nelson and killed him for reasons related to their both being drug dealers,' Owens would have no case, because the judge's observation would not have been the basis of Owens's conviction." Pet. App. 8a. But, of course, that is not what the trial court said.

To the contrary, the trial court determined that the witnesses at trial "skirted the real issue," and that "Owens's supposed (but by only the judge) knowledge of Nelson's involvement in the drug business [w]as 'the real issue' in the case." Pet. App. 8a (Seventh Circuit's parenthetical), *see also id.* at 4a. Thus, the trial court did not merely propose a superfluous theory of the crime, rather "the only ground for [the trial court] finding Owens guilty that he mentioned had no basis in that record (or elsewhere for that matter)." Pet. App. 6a-7a.

Petitioner argues that the "judge explicitly referred to 'the State's evidence' in rendering his verdict" in an attempt to argue that the trial court's verdict was not based on the "facts" the trial court invented, but rather on the evidence actually presented at trial. Pet. at 10-11. That argument is unsustainable. The trial court's actual words were that "the State's evidence has proved *that fact*." Pet. App. 5a (emphasis added). "[T]hat fact," of course, was that "you have a seventeen year old youth on a bike who is a drug dealer [Nelson], who Larry Owens knew he was a drug dealer. Larry Owens wanted to knock him off." Pet. App. 4a-5a. The mere reference to "the State's evidence" cannot transform the trial

court's error into a measured consideration of the evidence that was actually presented at trial.

Clearly established precedent from this Court makes clear that a conviction cannot be based on facts not introduced into evidence at trial. The three cases from this Court that the Seventh Circuit cited in its decision establish this point beyond peradventure. A bedrock principle of the criminal justice system is the right to a fair trial, which the Supreme Court has characterized as a "fundamental liberty secured by the Fourteenth Amendment." *Estelle*, 425 U.S. at 503. Integral to a fair trial, "is the principle that 'one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on circumstances not adduced as proof at trial." *Holbrook*, 475 U.S. at 567 (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978)). Petitioner's attempt to limit these cases narrowly to their facts, by for example claiming that *Holbrook* solely relates to the presence of additional uniformed guards in a courtroom or that *Williams* concerns only courtroom attire, misses the fundamental point these cases stand for. Pet. at 8-9.[2]

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[2] Petitioner also focuses on an irrelevancy in complaining that the "Seventh Circuit pointed to two of its own decisions" in granting relief under § 2254. Pet. at 9. The Seventh Circuit noted that "only clearly established violations of a defendant's constitutional rights" could constitute the basis for habeas relief, and cited three decisions from this Court for the established principal of law it was relying upon. Pet. App. 9a-10a. The fact that two decisions from the Seventh Circuit also

In the end, Petitioner does not dispute that the trial court could not have convicted Respondent based on facts outside of the record. The only way Petitioner can defend the trial court's verdict is by misconstruing his words. The Seventh Circuit's rejection of Petitioner's argument was entirely correct.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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acknowledged the basic principle that a defendant may not be convicted based on evidence not introduced at trial is of no significance.